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A Few Remarks About the Criminal Corruption in Hungary

Introductory remarks

Whenever we type the word „corruption” in any of the internet-based search programs, it gives nearly 20 million results, and the fact is, that hundreds of international conferences focus on the so-called “today’s plague” phenomenon every year.

Nowadays it is hard to say anything new about one of our greatest common enemy to date, that spreads across the globe, corruption.

The roots of abuse and misuse carried out to reach individual goals, backed by rights delegated by the community¹, date back to thousands of years.

To enumerate forms of corruption really takes a man, yet let’s recall the classic example, how Paris designated to choose the most beautiful of all goddess in Greek mythology was approached by different offers: it was probably Zeus’s wife who committed the presently most typical version of corruption, offering richness. The career opportunity promised by Pallas Athene on the other hand, also holds a good value even today.²

In addition, as far as we know, the enemy could pass the impenetrable Great Wall of China for centuries only by corrupting the guards.

Over the years, the situation did not improve too much.

Some International Instruments

In the last 20 years a considerable number of international instruments was adopted to oblige states to criminalise certain forms of corruptive behaviour.

¹ See in details: Endre BÓCZ: The Corruption in Hungarian Criminal Law. (In: Papers on the Corruption. Helikon/Korridor, Budapest, 1998)

² See János BÁNÁTI: Address of the President of the Budapest Bar Association (In: Young Penalist Conference on Corruption and Related Offences in International Business Relations. HAS Working Papers, No18. Budapest, 2003.p.10.)

The most important of these are the following:

- Protocol to the Convention on the Protection of the European Communities' financial interests (27 September 1996);
- Convention drawn up on the basis of Article K 3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (26 May 1997);
- Joint Action of 22 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on corruption in the private sector;
- Criminal Law Convention on Corruption (adopted on 27 November 1999 in the framework of Council of Europe);
- United Nations Convention against Transnational Organized Crime;
- Resolution (99) 5 of the Committee of Ministers of the Council of Europe: Agreement Establishing the Group of States against Corruption;
- Resolution (97) 24 of the Committee of Members of the Council of Europe: Twenty Guiding Principles for the Fight against Corruption;
- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions;
- The Reports on Group of States against Corruption (GRECO - 1999);
- Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee of 6 June 2011 – Fighting corruption in the EU [COM (2011) 308]

Global Corruption Barometer of Transparency International - 2013

The recently published Global Report of Transparency International gives special actuality to the abovementioned statement. According to the Report of 2013, which released some echoes in Hungary, our country had fallen back by one place on the ranking list.

“It seems as though Hungarian society is becoming insensitive to corruption. 70% of the population would not report corruption either because they do not trust authorities or they are afraid of repercussions. Mistrust penetrates public life more than ever, which is the hotbed for sidestepping rules, corruption and apathy. According to Transparency International, the

government does not encourage citizens to stand up against corruption, as it does not provide adequate protection for whistleblowers, nor does it enforce the fast and effective investigation of announcements of corruption.”³

With a view to those present, here I have to emphasize that the above generalization did not concern the judicial system, and Hungarian public opinion considers the judicial system as the least corrupt.

Let's take a more pragmatic look at the phenomenon: the corruption index in every country shows close relation to its GDP per capita.

If the corruption index improves by 1 point a(n) 0.3 percent increase in the GDP is likely to occur. (Hungary presently having 54), This is one good reason why it is worth fighting corruption.

A few words about the past and present in Hungary

Those earlier expectations, that did seek more effective actions against corruption from the use of more strict and rigorous tools of criminal law, or from fighting back the latent and undetectable crimes, or simply from the improvement of detection, were not met.

Corruption was related to the economic deficit in the last decades of the previous century, and it was made an ordinary, routine act, by the fact that some material goods were available only through offering and accepting illegitimate benefits. Before the transition of the market economy, a different type of corruption existed, which was harder to detect but was more widespread, the so-called exchange of symbolic goods (such as relations, connections, and positions) were exchanged for mutual benefits. Some people hoped that this form of protectionism could be de-emphasized by the re-establishment and transformation of the economy and economic conditions. Unfortunately, the forms of corruption, even with the re-establishment and transformation of the political and economic conditions, could not be eliminated, and could only adjust to these new conditions. The process of privatization in Hungary – especially its earlier stage – was infected by different forms of corruption. The politically determined legislation, and its weaknesses empowered the possibilities of abuse

³ In 2013 Hungary scored 54 points in the CPI survey, thus ranking 47th out of the 177 surveyed countries. Among the European Union's 28 member states, Hungary ranked 20th (last year 19th out of 27 member states); therefore, its ranking remains unchanged in the bottom third. In regional comparison, Hungary is in the mid-range, following Estonia, Poland, Lithuania and Slovenia.
(http://www.transparency.hu/HUNGARY_IS_CORRUPT_AND_IT_IS_NOT_THE_ONLY_ONE?bind_info=page&bind_id=322 – 10.04.2014.)

and misuse, and by the time the correct legal frames for the privatization were created, major part of the transition had already taken place.

Therefore we can see that corruption can not be eliminated in the foreseeable future. Even with the lack of economic constraints and pressure, the need for bribery still regenerates. Nowadays the interrelationship between power and corruption, the approach and the trade of the political influence appear as dominant as ever. The corrupt relations are intensifying on international level as well. Therefore we must pay attention to the new forms of corruption, that sometimes hide the usual basis of the act more, and therefore we must identify and handle these acts according to their severity, in order to develop effective countermeasures. And the dedication and determination of this strife shall be clear despite temporary setbacks.

The regulatory system of the Hungarian Criminal Law

Now let's look at how the Hungarian Criminal Law aims at fighting against corruption.

In the last 150 years four penal codes were enacted in Hungary. During the time of the Austro-Hungarian Monarchy the Penal Code of 1878 was enacted (which, naturally, was in force only in the territory of the historical Hungary and it was not valid for the territory of the Austrian Empire; the second one was enacted in 1961, the third in 1978 and the present in 2012.

Chapter XXVII of the recent Hungarian Criminal Code enumerates 9 corruption offences.

- Active Corruption in Economy
- Passive Corruption in Economy
- Active Corruption in Public Officials
- Passive Corruption in Public Officials
- Active Corruption in Court or Regulatory Proceedings
- Passive Corruption in Court or Regulatory Proceedings
- Misprision of Bribery
- Indirect Corruption
- Abuse of a Function

The regulation – that equally administers the domestic and international levels – is in accordance with the European standards. All forms of the passive corruption in economy and in public officials should it be either(request or acceptance of benefits) are punishable, in most

severe cases – if there is a concrete misconduct or breach of obligation related to the act – the punishment can add up to 10 years of imprisonment.

The active corruption in public officials (such as providing or promising benefits) is also punishable, but in the economic sphere it is only punishable if it leads to misconduct or breach of obligation. Therefore according to the Hungarian criminal law, in the economic sphere the benefits given or promised for fulfilling obligations without leading to misconduct or breach of obligation, is not criminal corruption (but requesting or accepting is a type of passive corruption.).

Here is the regulation of the most important forms of passive and active corruption⁴:

<p><i>Active Corruption</i></p> <p><i>Section 290</i></p>	<p><i>Passive Corruption</i></p> <p><i>Section 291</i></p>
<p>(1) Any person who gives or promises unlawful advantage to a person working for or on behalf of an economic operator, or to another person on account of such employee, to induce him to breach his duties is guilty of a felony punishable by imprisonment not exceeding three years.</p> <p>(2) The penalty shall be imprisonment between one to five years if the criminal offense described in Subsection (1) is committed in connection with a person working for or on behalf of an economic operator who is authorized to act in its name and on its behalf independently.</p> <p>(3) The penalty shall be:</p> <p>a) imprisonment between one to five years in the case under Subsection (1);</p> <p>b) imprisonment between two to eight years in the case under Subsection (2); if the crime of corruption is committed in criminal association with accomplices or on a commercial scale.</p> <p>(4) Any person who commits the act of corruption in connection with a person working for or on behalf of a foreign economic operator shall be punishable in accordance with Subsections (1)-(3).</p>	<p>(1) Any person who requests or receives an unlawful advantage in connection with his activities performed for or on behalf of an economic operator, for himself or for a third party, or accepts a promise of such an advantage, or is in league with the person requesting or accepting the advantage for a third party on his behest, is guilty of a felony punishable by imprisonment not exceeding three years.</p> <p>(2) If the perpetrator:</p> <p>a) breaches his official duty in exchange for unlawful advantage he is punishable by imprisonment between one to five years,</p> <p>b) commits the criminal offense defined in Subsection (1) in criminal association with accomplices or on a commercial scale he is punishable by imprisonment between two to eight years.</p> <p>(3) If the perpetrator is working for or on behalf of an economic operator who is authorized to act in its name and on its behalf independently, the penalty shall be imprisonment:</p> <p>a) between one to five years in the case under Subsection (1);</p> <p>b) between two to eight years in the case</p>

⁴ Act. C. of 2012. on the Hungarian Criminal Code

<p><i>(5) The penalty may be reduced without limitation - or dismissed in cases deserving special consideration - against the perpetrator of a criminal offense defined in Subsection (1) if he confesses the act to the authorities first hand and unveils the circumstances of the criminal</i></p>	<p><i>under Paragraph a) of Subsection (2);</i> <i>c) between five to ten years in the case under Paragraph b) of Subsection (2).</i> <i>(4) Any person working for or on behalf of a foreign economic operator shall be punishable in accordance with Subsections (1)-(3) for the commission of the criminal offense defined therein.</i> <i>(5) The penalty may be reduced without limitation - or dismissed in cases deserving special consideration - against the perpetrator of a criminal offense defined in Subsection (1) if he confesses the act to the authorities first hand, surrenders the obtained unlawful financial advantage in any form to the authorities, and unveils the circumstances of the criminal act.</i></p>
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<p><i>Passive Corruption in public Officials</i></p> <p><i>Section 294</i></p>	<p><i>Active Corruption in Public Officials</i></p> <p><i>Section 293</i></p>
<p><i>(1) Any public official who requests or receives an unlawful advantage in connection with his actions in an official capacity, for himself or for a third party, or accepts a promise of such an advantage, or is in league with the person requesting or accepting the advantage for a third party on his behest, is guilty of a felony punishable by imprisonment between one to five years.</i></p> <p><i>(2) The penalty shall be imprisonment between two to eight years if the criminal offense is committed by a high-ranking public official.</i></p>	<p><i>(1) Any person who attempts to bribe a public official by giving or promising unlawful advantage to such person or to another person for influencing such official's actions in an official capacity is guilty of a felony punishable by imprisonment not exceeding three years.</i></p> <p><i>(2) Any person committing bribery is punishable by imprisonment between one to five years if he gives or promises the advantage to a public official to induce him to breach his official duty, exceed his competence or otherwise abuse his position of authority.</i></p>

The new regulation that has been in effect for almost a year, is stricter than its predecessor which gave bigger freedom to passive economic parties unauthorized to take independent measures.

Opportunities and hopes for improvement

In the following, I would like to list those legislative tasks that are said to weaken the basis of corruption. I would like to start with what is always on the agenda, however, in my opinion it is not an appropriate, adequate tool.

In today's world, that urges for severity, the penalties related to corruption are often considered for further severity. Of course this is merely a question of willingness. Although the experience is that the idea of introducing more severe penalties only serves the prevention indirectly and to an uncertain extent.

Therefore – the increase of penalties could express and reflect the dedicated strife against criminal corruption. I think, that the real solution nowadays should not be the supervision of sanctions. The lack of severity has never been the reason, not even indirectly, for these criminal acts.

Similarly it seems that the possibility to evade the punishment in case of repentance did not live up to the expectations as well.

I do not consider the continuous establishment of new “independent anti-corruption syndicates”, boards, or committees to be an effective method, as these will always remain to be mere formal actions. Finally, I consider that the idea of paying part of the bribery sum to the denunciator as a reward as a false attempt. Corruption is an intimate criminal act, in most cases only the involved parties know about it, and the suspiciousness, accusation, or denunciation without the needed information is a double edged sword, that could lead to false accusations, which can seriously and ultimately damage the righteous human relations.

The supervision of measures providing the opportunity for corruption

What is it that gives us hope for success? Well, I think, that first and foremost the continuous and thorough supervision of legal norms related situations those have a potential to corrupt relationships. – could be such a method. It shall not discourage us that Hungary has numerous such measures situations to superwise. In this matter, criminalists, criminologists, or even law enforcers and executors shall establish a continuous, consultative co-operation primarily with the professionals from the fields of business law and administrative law.

It might be surprising, but I also consider that if these goals can only be realized by establishing a more complex and complicated bureaucracy, then we shall accept this price.

It seems, that we cannot use a more effective and direct weapon against criminal corruption than bureaucracy and the multistage proceedings supported by several steps of supervision and filtering. Of course the emphasis is not on the complexity and the time-consuming characteristics of it, but rather on implementing the mutual and continuous control.⁵

To conclude, I would add one more comment.

We shall not deny the attitude-forming effects of ethical norms, and righteousness.

I am well aware of the fact, that this requirement is so obvious, on the other hand it is slightly naïve, that it is also naïve, and lacks from reality. Nowadays it is not easy to expect that today's harsh and violent money-seeking attitude, the publicity of ultimate self-interest, or the unscrupulous fight for better market positions could be restrained and subdued or even be formed by ethical remonstrance. On the long run however, we should not forget these Ideas. We must believe that sooner or later the exemplary and educative role of morals will inevitably provide aid in the fight against corruption.

Even if we do not make it to see it happen, the future still depends on what we leave to our successors.

⁵ The European Commission has acknowledged "ambitious" policies in Hungary to fight corruption, but added that financing of political parties, control mechanisms for public procurement procedures and conflicts of interest among public officials remain issues of concern.

The EU anti-corruption report [...] said Hungary should do more to strengthen accountability standards for elected and appointed officials, deal with risks concerning favouritism in public administration and to progressively eliminate the practice of gratuity payments in health care. (EC concerned over political financing, corruption in Hungary - <http://www.politics.hu/20140204/ec-concerned-over-political-financing-corruption-in-hungary/> - 10.04.2014.)